PACE FRANCE

STANDARD TERMS AND CONDITIONS OF SALE

1. **DEFINITIONS**

1.1 Pace means Pace France and successors and/or permitted assigns.

1.2 The Purchaser means the entity to whom the Product is supplied subject to these Conditions and whose order is accepted by Pace.

1.3 In these Conditions (and any appendices or attachments hereto) the following words and phrases shall, unless the context otherwise requires, have the following meanings:

Acknowledgement of Order means the form of communication sent by Pace to the Purchaser confirming an order of the Product in accordance with these Conditions;

Conditions means these terms and conditions;

Confidential Information means all communications and all information whether written, visual or oral and all other materials of a confidential or proprietary nature (including trade secrets and information of commercial value) supplied by either Party to the other;

Consumer User Manual means the material to be provided to a consumer, whether physical or embodied in software or on screen systems to enable them to use the Product;

Deliver/Delivery means ex works at the Premises (INCOTERMS 2000);

Intellectual Property Rights means all patents, copyrights, design rights, trade marks, service marks, trade secrets, know-how, database rights, intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world;

Party/Parties means Pace and/or the Purchaser;

Premises means 33 rue de Verdun, BP 44, 92152 Suresnes, France, or such other location as notified to the Purchaser;

Product means the product (including the Software) to be supplied under these Conditions;

ROM means read only memory;

Software means the software embedded in ROM or flash memory and incorporated in the Product;

Specification means Pace's standard specification in respect of the Product;

Territory means world wide;

Working Day means any day (other than a Saturday or a Sunday) when clearing banks are open for business for the transaction of normal banking business but excluding days on which Pace's Premises is closed for business.

2. **GENERAL**

2.1 All quotations and offers are made and all orders are accepted by Pace subject to these Conditions and, except as otherwise provided herein, all other terms, conditions or warranties are excluded from any contract between Pace and the Purchaser including any terms and conditions which may purport to apply under any order or similar document. All orders for the Product shall be deemed to be an offer for the Purchaser to purchase the Product pursuant to these Conditions. Acceptance or Delivery of the Product shall be deemed conclusive evidence of the Purchaser's acceptance of these Conditions.

2.2 Any written quotation or estimate provided by Pace shall constitute an invitation to treat and no binding contract shall be created by the placing of an order by the Purchaser unless and until Pace has sent an Acknowledgement of Order form to the Purchaser.

2.3 No particulars contained in any advertising matter, catalogues web site, publications and/or any other information supplied by Pace, nor any verbal representation by any employee or agent of Pace shall be part of these Conditions nor shall they be treated as constituting a representation on the part of Pace. The Purchaser acknowledges that there are no representations outside these Conditions which have induced it to enter into these Conditions.

2.4 No alterations or modifications to these Conditions shall be binding on Pace unless expressly accepted in writing by Pace.

3. **SPECIFICATION**

3.1 Each Product supplied to the Purchaser under these Conditions shall conform in all material respects to the Specification unless otherwise stated in the Acknowledgement of Order and shall be assembled at Pace's Premises or the premises of Pace's subcontractor(s).

4. **INTELLECTUAL PROPERTY/SOFTWARE LICENCES**

4.1 The Purchaser acknowledges that all Intellectual Property Rights in the Product and/or the Software and/or any documentation relating thereto (together with any enhancements, modifications, derivatives and/or any other amendments thereto) shall remain vested in Pace and/or its licensors. The Purchaser shall have no rights (save as expressly set out in Clause 4.2) in respect of any Intellectual Property Rights belonging to Pace (or its licensors) nor any goodwill associated therein.

4.2 Subject to these Conditions and following Delivery, Pace grants to the Purchaser, a non-exclusive, non-transferable licence to (subject to the minimum end user licence conditions which will be delivered with each unit of the Product), use the Software as a component part of and in conjunction with the Product.

4.3 The Purchaser shall not:

4.3.1 sublicense, assign or otherwise transfer any of the rights or licences granted in these Conditions;

4.3.2 except as expressly permitted herein or permitted by law, extract and/or remove the Software from the ROM or any flash memory in which it is supplied;

4.3.3 except as permitted by law, reverse engineer, reverse compile and/or disassemble the Software; and/or
4.3.4 copy, modify, enhance or convert the Software and/or the Product.

5. **INDEMNITY**

5.1 The Purchaser shall be liable for and shall indemnify Pace in full against any claim or proceedings, expense, fees (including legal fees), liability and/or other losses whether arising directly or indirectly where the Purchaser is in breach of these Conditions so as to constitute an infringement of any Intellectual Property Rights belonging to Pace (or its licensors) and/or any third party Intellectual Property Rights.

5.2 In the event that the Purchaser becomes party to any claim or action that the normal use or possession of the Products within the Territory infringes the Intellectual Property Rights of a third party ("IPR Claim"), Pace shall be entitled at its own expense and option either to:

5.2.1 procure the right for Purchaser to continue to use or sell the Product; or

5.2.2 modify the Product (without materially detracting from its functionality) so as to avoid the IPR Claim; or

5.2.3 replace the Product with non-infringing substitutes provided that such substitutes do not entail a material reduction in functionality.

5.3 If Pace in its reasonable judgement is not able to exercise any of the options set out in Clause 5.2 above then Purchaser shall return the Product(s) which are the subject of the IPR Claim and Pace shall refund the Price paid in respect of such Product(s). Clauses 5.2 and 5.3 state Pace's entire liability and Purchaser's sole remedy with regard to an IPR Claim.

6. **PRICE**

6.1 Except as otherwise agreed, the quoted price for the Product is exclusive of any Value Added Tax or other applicable sales tax, levy or duty required by law. For the avoidance of doubt, the Purchaser shall pay all charges, duties and/or other taxes required by law and/or which are assessed against the Product in any relevant jurisdictions.

6.2 Except as otherwise agreed, the price for the Product shall be Pace's price for the Product at the date of Pace's Acknowledgement of Order or, in the event of Pace requiring payment before Delivery of the Product, the date upon which such payment is requested. Pace shall be entitled to invoice the Purchaser on or at any time after Delivery.

6.3 Pace reserves the right to increase the price of any Product, on written notice to the Purchaser, to reflect any additional costs and expenses to Pace in manufacturing, assembling or delivering the Product. Such price increase shall only apply to orders received after the date on which Pace provides the Purchaser with such written notice pursuant to this Clause 6.3.

7. **PAYMENT**

7.1 Payment for the Product and any other amount payable by the Purchaser shall be Euros (or such other currency as Pace shall direct in its sole discretion) and shall be due from the Purchaser in advance of Delivery if requested by Pace or otherwise 30 days after the date of Delivery. Interest on unpaid invoices will run from day to day at the interest rate applied by the European Central Bank to its last refinancing operation plus 10% per annum from the date when payment for the Product is due until the date of payment in full by the Purchaser and shall accrue after as well as before any judgement. The Purchaser shall reimburse Pace all costs and expenses (including legal costs) incurred in the collection of any overdue payments.

7.2 No payment shall be deemed to have been received until Pace has received cleared funds.

7.3 Payment of all sums provided for under these Conditions shall be made in full and free from any deductions, rights of settlement, counterclaims or liens.

7.4 The Purchaser shall if requested by Pace secure payment by way of a confirmed stand-by letter of credit within 30 days of the date of the Purchaser's order or of Pace's written request (whichever shall be the later). If the Purchaser fails to open the stand-by letter of credit by such date Pace shall be entitled to terminate the Purchaser's order forthwith without liability or Pace may be entitled to claim interest in accordance with Clause 7.1 above.

8. **RESERVATION OF TITLE AND RISK**

8.1 The risk in the Product shall remain with Pace until Delivery or payment for the Product by the Purchaser in full, whichever is the earlier, at which time the risk in the Product shall be transferred to the Purchaser.

8.2 Title to the Product (but, for the avoidance of doubt, not title to the Software) shall only pass to the Purchaser upon the happening of any one of the following events:-

8.2.1 the Purchaser having paid to Pace all sums (including any default interest and/or any applicable taxes) due from it to Pace under these Conditions and all other contracts made at any time between Pace and the Purchaser whether or not the same are immediately payable; or

8.2.2 Pace serving notice in writing specifying that the title in the Product has passed.

8.3 Pace may recover any Product in respect of which title has not passed to the Purchaser if the Purchaser, being a company, does anything or fails to do anything which could entitle a creditor to appoint a receiver to take possession of any of the Purchaser's assets; or which would entitle any person (including the Purchaser itself) to present a valid petition for winding up the Purchaser or to propose an application for administration of or voluntary arrangements in relation to the Purchaser under Insolvency Law; or if a resolution is passed for the winding up of the Purchaser (otherwise than for the purpose of amalgamation or reconstruction while solvent); or if the Purchaser ceases or threatens to carry on business by reason of insolvency or approaching insolvency; or otherwise if anything analogous under the law of any jurisdiction occurs to the Purchaser; or if distress or execution is levied against the Purchaser's assets; or if a judgement against the Purchaser remains unsatisfied for more than seven days or if the Purchaser fails to pay its debts as and when they fall due.

8.4 If Pace so requires, the Purchaser shall store the Product separately from other goods and shall ensure that they are clearly identifiable as belonging to Pace. During such time as the Purchaser possesses any Product with Pace's consent, the Purchaser may in the normal course of its business sell or hire the goods as principal and without committing Pace for any liability to the person dealing with the Purchaser.

8.5 The Purchaser irrevocably licenses Pace, its officers, employees and agents to enter upon any premises of the Purchaser, with or without vehicles for the purpose either of satisfying itself that Clause 8.4 above is being complied with by the Purchaser or of recovering any Product in respect of which title has not passed to the Purchaser.

9. **DELIVERY**

9.1 Unless agreed otherwise, Delivery of the Product shall be deemed to take place when Pace notifies the Purchaser that the Product is available for collection from the Premises and the Purchaser shall arrange for collection of the Products within five Working Days of receipt of such notice.

9.2 If five Working Days after notification pursuant to Clause

9.1, the Purchaser refuses and/or fails to collect any Product(s), Pace shall be entitled to arrange storage of the Product(s) either at the Premises or elsewhere on the Purchaser's behalf and at the Purchaser's risk and expense.

9.3 Any dates specified by Pace for delivery of the Products are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time.

9.4 Pace shall not be liable in any way for any direct or indirect loss, damage or expense (including without limitation loss of any profits, loss of business or turnover, or consequential loss and all liability to third parties) suffered or incurred by the Purchaser as a consequence of any delay in any Delivery.

9.5 Pace shall be entitled to deliver instalments in any sequence. No default or failure by Pace to deliver one or more instalments shall entitle the Purchaser to repudiate these Conditions to which the instalments relates and/or to claim damages in respect thereof. Each instalment shall be a separate contract provided that Delivery for instalments may be withheld until the price for the Product comprised in earlier instalments has been fully paid.

9.6 The Purchaser shall notify Pace that the Product is accepted in accordance with the Specification within ten Working Days of Delivery. If the Purchaser has not notified Pace in accordance with this Clause 9.6 then acceptance of the Product shall be deemed to have occurred.

9.7 The Purchaser shall comply with all export control laws and regulations applicable in the Territory and shall not export the Products or any part thereof or any technical data without obtaining all of the applicable licences, authorisations and regulatory approvals. The Purchaser shall be solely responsible at its cost for obtaining such licences and authorisations and shall indemnify Pace for any costs, damages or expenses which Pace incurs as a result of the Purchaser's failure to obtain the relevant licences and approvals.

9.8 The quantity of any consignment of Products as recorded by Pace at Delivery shall be conclusive evidence of the quantity received by the Purchaser unless the Purchaser can provide conclusive evidence proving the contrary.

10. **WARRANTY**

10.1 Subject to the provisions of this Clause 10, Pace hereby warrants to the Purchaser that:-

10.1.1 the Product (excluding the Software) shall be free from any material defects in materials and workmanship for a period of 12 months from the date of manufacture; and
10.1.2 the Software shall substantially conform to the Specification for a period of 90 days following the date of Delivery of the Product in which it subsists.

10.2 If Pace receives written notice from the Purchaser of any breach by Pace of the warranties contained in Clause 10.1 Pace shall, at its own expense and as soon as it is reasonably able, investigate that breach following receipt of such notice.

10.3 Subject to Clauses 10.4 and 10.5, in the event of any breach by Pace of the warranties specified in Clause 10.1 of these Conditions then the Purchaser's sole and exclusive remedy and Pace's entire liability will be for Pace to use its commercially reasonable endeavours to:

10.3.1 in respect of a breach of Clause 10.1.1, at Pace's discretion, repair and/or replace the Product in question. Save that if the Purchaser seeks repair or replacement of Products under this Clause 10.3.1 but Pace no longer manufactures that Product, Pace shall be entitled to replace the Products with products of an equivalent standard and quality or (at its discretion) refund the Price paid for that Product(s).

10.3.2 in respect of a breach of Clause 10.1.2, at Pace's discretion, correct any errors with the Software within a reasonable time or, refund the applicable Price paid by Purchaser in respect of the Product(s) in question, provided always that such error is reproducible by Pace and is due to Pace's sole default and is not due to the Purchaser's incorrect use of the Software.

10.4 Pace shall be under no liability in respect of a defect arising from:

10.4.1 interference, tampering or work performed on the Product;

10.4.2 misuse, wilful damage, abnormal working conditions, failure to follow Pace's instructions (whether oral or in writing) or negligence;

10.4.3 accidental damage or any other damage not consistent with fair wear and tear;

10.4.4 any software (other than the Software) downloaded to the Product.

10.5 Pace shall not be liable for a breach of the warranties set out in Clause 10.1 unless:

10.5.1 the Purchaser gives notice of the breach to Pace within 7 Working Days of the time when the Purchaser discovers or ought to have discovered the breach; and

10.5.2 Pace is given a reasonable opportunity after receiving the notice of examining such Products and the Purchaser (if asked to do so by Pace) returns such Products to Pace's place of business for the examination to take place there.

10.6 Pace recommends that the Purchaser enter into a support services agreement with Pace to provide further or additional support beyond the warranty periods referred to in this Clause 10. Such support services shall be provided upon Pace's standard terms and conditions and at Pace's current rates for such services, available from the Pace secure web site.

10.7 The warranties set forth in this Clause 10 are expressly subject to Clause 12 (Limitation of Liability).

11. **LIMITATION OF WARRANTY**

11.1 Except as expressly stated in these Conditions all warranties, terms and conditions, whether oral or written, express or implied by statute or otherwise (including but not limited to any warranties, terms and conditions of

fitness for purpose, description or quality) are hereby excluded to the fullest extent permitted by law.

12. **LIMITATION OF LIABILITY**

12.1 The limitations and exclusions set forth above in this Section 12 shall apply only to the extent permitted by applicable mandatory law.

12.2 The liability of Pace in respect of direct physical loss or damage to the Purchaser's tangible property (excluding the Products) caused by the negligence of Pace or its employees agents or sub-contractors shall not exceed in aggregate one million five hundred thousands Euros (EUR 1,500,000).

12.3 Except as stated in Clauses 12.1 and 12.2 above, Pace's aggregate and cumulative liability towards Purchaser under any agreement shall not exceed an amount of ten percent (10%) of the related agreement.

12.4 Subject to Clause 12.1 and whether or not Pace has been advised of the possibility of such loss or damage Pace shall not be liable to the Purchaser, , in respect of:

12.4.1 the following whether direct or indirect:

(a) loss of profits;

(b) loss of anticipated savings;

(c) loss of revenue;

(d) loss of business; and/or

12.4.2 any type of indirect loss or damage howsoever caused.

12.5 The Purchaser acknowledges that the Product price is based on the assumption that the liability of Pace and the Purchaser is as set out herein. The Purchaser is advised to insure against any risk not accepted by Pace.

13. **CONFIDENTIALITY**

13.1 Each of Pace and the Purchaser shall at all times:

13.1.1 use its best endeavours to keep all Confidential Information confidential and accordingly, not disclose any Confidential Information to any other person; and

13.1.2 not use any Confidential Information for any purpose other than the performance of its obligations under these Conditions.

13.2 Confidential Information may be disclosed by either Party:

13.2.1 to the extent required by law; or

13.2.2 where it is public knowledge at the date of disclosure or can be shown by the disclosing party to have been known prior to such disclosure.

13.3 The Purchaser acknowledges that the Products contain the proprietary, confidential and trade secret information of Pace, or where applicable, the third party owner.

13.4 Each party shall only divulge Confidential Information of the other to those of its employees, agents or subcontractors who are directly involved in the performance of these Conditions and shall take all reasonable precautions to ensure that such employees, agents of sub-contractors are aware of and comply with these obligations as to confidentiality.

13.5 The provisions of this Clause 13 shall remain in full force and effect for period of ten (10) years from the date of the last Acknowledgement of Order issued by Pace to the Purchaser.

14. **TERMINATION AND CANCELLATION**

14.1 Pace shall be entitled to forthwith terminate any order placed by the Purchaser by written notice if the Purchaser fails to pay any invoice, or in advance if requested, in accordance with these Conditions, or the Purchaser commits any continuing or material breach of these Conditions; or makes any composition with its creditors; or suffers any distress or execution to be levied upon its assets; or is wound up either compulsorily or voluntarily; or suffers a receiver of any of its assets to be appointed; or ceases or threatens to cease carrying on business; or otherwise fails to pay its debts as and when they fall due.

14.2 If the Purchaser purports to cancel any order or any part thereof or refuses to accept Delivery then without prejudice to any other rights or claims which Pace may have, the Purchaser shall:

14.2.1 pay to Pace an amount equal to the full cost to Pace of all components, purchased by Pace or which Pace is committed to purchase as at the date of such cancellation and which relate to the relevant order, provided that Pace shall use its reasonable endeavours to mitigate its losses arising from such cancellation by utilising such components wherever possible to meet orders of other purchasers; or

14.2.2 take Delivery of and pay to Pace, the price in accordance with the terms of these Conditions in relation to any Product which is in the process of being delivered to Purchaser at the date of cancellation.

15. **FORCE MAJEURE**

Except for the payment of the Price by the Purchaser, neither party shall be liable to the other for any delay or non-performance of its obligations under these Conditions arising from any cause or causes beyond its reasonable control including, without limitation, any of the following: act of God, governmental act, delay or failure of any supplier, sub-contractor or carrier, war, fire, flood, explosion or civil commotion.

16. **MISCELLANEOUS**

16.1 The Purchaser may not assign, novate, sub-licence, subcontract or in any way dispose of its rights or obligations under these Conditions to any third party without the prior consent of Pace.

16.2 Any notice required to be served pursuant to these Conditions shall be served on Pace at the Premises or such other address as Pace may from time to time notify to the Purchaser and on the Purchaser at the address notified to Pace by first class registered post, registered air mail or by e-mail, telex or facsimile. Any such notice served by post shall be deemed to have been served in the case of a destination in France 2 days after the date of despatch and 7 days after the date of despatch to any other destination. In the case of service by telex or facsimile when the addressee's machine acknowledges receipt thereof and in the case of email, when the email is available to be read in the recipient's inbox.

16.3 Save to the extent permitted by law, these Conditions set forth and shall constitute the entire agreement between the parties and shall supersede any and all previous agreements or understandings between the parties. The parties acknowledge that any supplementary agreements

drafted by Pace relating to the Products shall be read in conjunction with these Conditions

16.4 All conditions, warranties or other terms implied by statute, common law or otherwise are hereby excluded to the fullest extent permitted by law. No term of these Conditions is intended to confer a benefit on, or to be enforceable by, any person who is not a party to these Conditions.

16.5 Any term of these Conditions which is judged to be void or unenforceable shall to the extent of such invalidity be severable and the continuation in full force and effect of the remainder of the provisions will not be prejudiced.

16.6 Failure by Pace at any time to enforce any of these Conditions shall not be construed as a waiver by Pace of such Conditions or any other Conditions and Pace shall be entitled to enforce any such breach at any time.

16.7 These Conditions and any contract formed between the Parties pursuant to these Conditions shall be governed and interpreted in accordance with the laws of France and shall be subject to the jurisdiction of the Tribunal de commerce of Nanterre but nothing in this Clause shall limit the right of Pace at its sole discretion to bring proceedings in connection with these Conditions, or any such contract in any other court of competent jurisdiction.

16.8 Nothing in these Conditions is intended to confer any benefit on any third party (whether referred to herein by name, class, description, or otherwise) or any right to enforce a term contained in these conditions